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Letter Ruling 98-1: 80 Percent or More Ownership of a Non-Massachusetts Business Entity by an S Corporation

February 4, 1998

On behalf of your client, ***** (herein "Parent Corporation"), a domestic corporation currently taxed as an S corporation for federal income tax purposes, you have requested a letter ruling on whether Massachusetts will recognize Parent Corporation's status as an S corporation if it directly owns 80 percent or more of a non-Massachusetts business entity classified as either a partnership or a single owner business entity treated as a branch or division under Treasury Regulation §§ 301.7701-2(a) and 301.7701(c)(2) (herein "federal check-the-box rules").^[1] Under federal law, an S corporation is permitted to own 80 percent or more of a C corporation. See P.L. 104-188, § 1308(a) (effective for tax years beginning after December 31, 1996). However, prior to 1997, such corporate ownership by an S corporation would have terminated the S corporation shareholder's election to be treated as an S corporation. See IRC § 1362(d)(2). For the reasons stated below, we rule that Massachusetts will recognize the Parent Corporation's status as an S corporation if it is treated as an S corporation under the Internal Revenue Code.

Discussion

In general, the Massachusetts personal income tax relies upon the definitions found in the 1988 Internal Revenue Code (Code). G.L. c. 62, § 1. However, for the limited purpose of defining S corporations and characterizing income as S corporation income, the Massachusetts S corporation regulation adopts the current Code with certain additional eligibility requirements not relevant here. See 830 CMR 62.17A.1(2). For corporate excise purposes, Massachusetts generally adopts the current Code. See e.g. G.L. c. 63, §§ 30.3, 30.4, 32D. Thus, a corporation that meets the definition of an S corporation for federal tax purposes will be eligible for S corporation treatment in Massachusetts if it is otherwise eligible for such treatment under the S corporation regulation. Since Massachusetts law does not otherwise prohibit an S corporation from directly owning 80 percent or more of a non-Massachusetts business entity classified as either a partnership or a single owner business entity treated as a branch or division under the federal check-the-box rules, such ownership will not terminate a corporation's status as an S corporation for Massachusetts purposes.

Conclusion

Under the facts stated above, it is ruled that Massachusetts will recognize the Parent Corporation's status as an S corporation where it directly owns 80 percent or more of a non-Massachusetts business entity classified as either a partnership or a single owner business entity under the federal check-the-box rules, so long as it maintains its eligibility for S corporation treatment for federal purposes.

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Very truly yours,

/s/Mitchell Adams

Mitchell Adams
Commissioner of Revenue

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[\[1\]](#) For purposes of this ruling we assume that such business entity would be taxed as a corporation under G.L. c. 63 if it were subject to Massachusetts taxing jurisdiction.